

AMENDED IN SENATE AUGUST 2, 2010

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CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 655

Introduced by Assembly Member Emmerson

February 25, 2009

An act to amend Sections 21702.5, 21705, *21706*, 21707, ~~21708~~, and 21709 of, and to repeal and add Section 21710 of, the Business and Professions Code, relating to self-service storage facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 655, as amended, Emmerson. Self-service storage facilities.

Existing law, the California Self-Service Storage Facility Act, specifies remedies and procedures for self-service storage facility owners when occupants are delinquent in paying rent or other charges. Under existing law, if an owner sends an occupant a preliminary lien notice by certified mail, the owner may, upon the effective date of the lien, deny the occupant access to the space, enter the space, and remove property to safekeeping. However, if the owner sends the preliminary lien notice by first-class mail with certificate of mailing, the owner may not remove the property for at least 14 days following the effective date of the lien. Existing law requires owners to send occupants a notice of lien sale stating that the property will be sold to satisfy the lien after a date not less than 14 days following the date of mailing unless the amount of the lien is paid or the occupant returns a declaration in

opposition to lien sale in a specified form. Existing law specifies procedures for an owner to enforce the lien following receipt of a declaration in opposition to lien sale. Existing law requires that a lien sale be advertised in a newspaper of general circulation in the judicial district where the sale is to be held, or posted in conspicuous places in the neighborhood of the proposed sale, as specified, and provides that prior to a lien sale, any person claiming a right to the goods may pay the amount necessary to satisfy the lien and reasonable expenses incurred for particular actions taken.

This bill would provide that, if the occupant has not paid the full amount specified by the date in the preliminary lien notice, the lien will attach as of that date and the owner may deny the occupant access to the space, enter the space, and remove any property to safekeeping. The bill would require the owner to send the occupant a notice of lien sale stating that: the property will be sold to satisfy the lien after a specified date that is not less than ~~21~~ 14 days from the date of mailing *unless the occupant executes and returns by certified mail a specified declaration in opposition to lien sale*; the occupant may regain full use of the space by paying the full lien amount prior to the specified date; ~~the occupant may return a Declaration in Opposition to Lien Sale on a specified form~~; the occupant may challenge the lien sale by filing an action in a court having jurisdiction as specified; and other information, as specified. The bill would specify procedures for an occupant to challenge a lien sale in court. The bill would provide that prior to any lien sale, any person claiming a right to the goods may pay the amount necessary to satisfy the lien together with one month's rent in advance, in which case the owner would retain the property pending a court order directing the disposition of the property. The bill would also prescribe procedures to be followed if a court order is not obtained.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 21702.5 of the Business and Professions
- 2 Code is amended to read:
- 3 21702.5. (a) Any lien on a vehicle or vessel subject to
- 4 registration or identification under the Vehicle Code which has
- 5 attached and is set forth in the documents of title to the vehicle or

1 vessel shall have priority over any lien created pursuant to this
2 chapter.

3 (b) Any lien created pursuant to this chapter on a vehicle or
4 vessel subject to registration or identification under the Vehicle
5 Code shall be enforced in accordance with the provisions of Section
6 3071 of the Civil Code, in the case of a vehicle, or Section 503 of
7 the Harbors and Navigation Code, in the case of a vessel, and not
8 as prescribed in Sections 21705 to 21711, inclusive.

9 (c) Any lien created pursuant to this chapter on a vehicle or
10 vessel subject to registration or identification under the Vehicle
11 Code shall not include any charges for rent, labor, or other services
12 incurred pursuant to the rental agreement, accruing more than 60
13 days after the date the lien imposed pursuant to this chapter
14 attaches, as set forth in Section 21705, and before application is
15 made for authorization to conduct the lien sale pursuant to the
16 requirements of Section 3071 of the Civil Code or Section 503 of
17 the Harbors and Navigation Code.

18 (d) Any proceeds from a lien sale shall be disposed of pursuant
19 to Section 3073 of the Civil Code, in the case of a vehicle, or
20 Section 507.5 of the Harbors and Navigation Code, in the case of
21 a vessel.

22 SEC. 2. Section 21705 of the Business and Professions Code
23 is amended to read:

24 21705. (a) If the notice has been sent as required by Section
25 21703 and the total sum due has not been paid within 14 days of
26 the termination date specified in the preliminary lien notice, the
27 lien imposed by this chapter attaches as of that date and the owner
28 may do all of the following:

29 (1) Deny an occupant access to the space.

30 (2) Enter the space.

31 (3) Remove any property found therein to a place of safekeeping.

32 (b) Upon taking the actions described in subdivision (a), the
33 owner shall send to the occupant, addressed to the occupant's last
34 known address, and to the alternative address specified in
35 subdivision (b) of Section 21712, by certified mail or by first-class
36 mail, if the owner obtains a certificate of mailing, postage prepaid,
37 both of the following:

38 (1) A notice of lien sale that states all of the following:

1 (A) That the occupant's right to use the storage space has
2 terminated and that the occupant no longer has access to the stored
3 property.

4 (B) That the stored property is subject to a lien, the current
5 amount of the lien, and that the lien will continue to increase if
6 rent is not paid.

7 (C) That the property will be sold to satisfy the lien after a
8 specified date that is not less than ~~21~~ 14 days from the date of
9 mailing the notice, unless the occupant executes and returns by
10 certified mail a ~~Declaration in Opposition to Lien Sale~~ *declaration*
11 *in opposition to lien sale* in the form set forth in paragraph (2).

12 (D) A statement that the occupant may regain full use of the
13 space by paying the full lien amount prior to the date specified in
14 subparagraph (C).

15 (E) A conspicuous statement that the occupant may challenge
16 the sale by filing an action in any court having jurisdiction to render
17 a judgment in the amount of the lien.

18 (F) That any excess proceeds of the sale over the lien amount
19 and costs of sale will be retained by the owner and may be
20 reclaimed by the occupant or claimed by another person at any
21 time for a period of one year from the sale and that thereafter the
22 proceeds will escheat to the county in which the sale is to take
23 place.

24 (2) A blank ~~Declaration in Opposition to Lien Sale~~ *declaration*
25 *in opposition to lien sale* that shall be in substantially the following
26 form:

27
28 DECLARATION IN OPPOSITION TO LIEN SALE
29

30 ~~You may file suit in any court with jurisdiction of matters in the amount of~~
31 ~~the lien (that may be a small claims court). The suit must be filed within 21~~
32 ~~days of returning this declaration in the jurisdiction where you reside or where~~
33 ~~the self-service storage facility is located, or your property may be sold. You~~
34 ~~must complete all sections of this declaration. If the owner cannot contact or~~
35 ~~serve you at the address and telephone number that you provide below, this~~
36 ~~declaration shall be void and the owner may sell your stored property.~~
37

38 I, _____, have received the notice of lien sale
39 (occupant's name)

of the property stored at _____ .
(location and space #)

I oppose the lien sale of the property, because (provide a brief explanation
of the reason your property should not be sold): *of the reason the owner's lien
may not be valid. For example, "I have paid my rent and other charges in
full"*):

My address is:

(address) _____

(city) _____

(state) _____

(ZIP Code) _____

(telephone number) _____

~~I understand that I must file a lawsuit for a hearing on the validity of the lien
no later than 21 days after returning this declaration in opposition to lien sale.
If I do not file suit and serve the self-service storage facility where the property
is stored, the property may be advertised for sale and sold by the self-service
storage facility owner.~~ I understand that the lienholder may file an action
against me in any court of competent jurisdiction, including small claims court,
at the address provided above, and if a judgment is given in his or her favor,
I may be liable for the court costs. I also understand that the declaration is
not valid if (a) the address provided in this declaration is not my current
address or (b) I change my address at any time prior to service of an action
on the lien and I do not provide the owner the address within 10 days of the
change.

I declare under penalty of perjury that the foregoing is true and correct, and
that this declaration was signed by me on _____ at _____ .
(date) (place)

(signature of occupant)

*SEC. 3. Section 21706 of the Business and Professions Code
is amended to read:*

21706. If a declaration in opposition to the lien sale, executed
under penalty of perjury, is not received by the owner prior to the
date of sale set forth specified in the notice of lien sale by certified
mail, is not completed and signed by the occupant, if the occupant
cannot be contacted or served at the address provided in the

1 *declaration, or if the occupant withdraws the declaration in*
2 *opposition to the lien sale in writing, the owner may, subject to*
3 *the provisions of Sections 21708 and 21709, sell the property upon*
4 *complying with the requirements set forth in Section 21707.*

5 ~~SEC. 3.~~

6 SEC. 4. Section 21707 of the Business and Professions Code
7 is amended to read:

8 21707. After the expiration of the time given in the notice of
9 lien sale, pursuant to subdivision (b) of Section 21705, or following
10 the failure of a claimant to pay rent or obtain a court order pursuant
11 to Section 21709, an advertisement of the sale shall be published
12 once a week for two weeks consecutively in a newspaper of general
13 circulation published in the judicial district where the sale is to be
14 held. The advertisement shall include a general description of the
15 goods, the name of the person on whose account they are being
16 stored, and the name and location of the storage facility. If there
17 is no newspaper of general circulation published in the judicial
18 district where the sale is to be held, the advertisement shall be
19 posted at least 10 days before the sale in not less than six
20 conspicuous places in the neighborhood of the proposed sale. The
21 sale shall be conducted in a commercially reasonable manner.
22 After deducting the amount of the lien and costs of sale, the owner
23 shall retain any excess proceeds of the sale on the occupant's
24 behalf. The occupant, or any other person having a court order or
25 other judicial process against the property, may claim the excess
26 proceeds, or a portion thereof sufficient to satisfy the particular
27 claim, at any time within one year of the date of sale. Thereafter,
28 the owner shall pay any remaining excess proceeds to the treasury
29 of the county in which the sale was held.

30 ~~SEC. 4. Section 21708 of the Business and Professions Code~~
31 ~~is amended to read:~~

32 ~~21708. Any person who has a perfected security interest under~~
33 ~~Division 9 (commencing with Section 9101) of the Commercial~~
34 ~~Code may claim any personal property subject to the security~~
35 ~~interest and subject to a lien pursuant to this chapter by paying the~~
36 ~~total amount due, as specified in the preliminary lien notice, for~~
37 ~~the storage of the property. Upon payment of the total amount due,~~
38 ~~the owner shall deliver possession of the particular property subject~~
39 ~~to the security interest to the person who paid the total amount~~
40 ~~due. The owner shall not be liable to any person for any action~~

1 ~~taken pursuant to this section if the owner has fully complied with~~
2 ~~the requirements of Sections 21704 and 21705.~~

3 SEC. 5. Section 21709 of the Business and Professions Code
4 is amended to read:

5 21709. Prior to any sale pursuant to Section 21707, any person
6 claiming a right to the goods may pay the amount necessary to
7 satisfy the lien together with one month's rent in advance. In that
8 event, the goods shall not be sold, but shall be retained by the
9 owner pending a court order directing the disposition of the
10 property. If a court order is not obtained within 30 days following
11 the date of the payment pursuant to this section, the claimant shall
12 pay the owner the monthly rental charge for the space where the
13 property is stored pursuant to the terms of the rental agreement. If
14 the claimant does not pay this rent, the owner may sell or dispose
15 of the personal property in accordance with Section 21707. The
16 owner shall have no liability for the sale or other disposition of
17 the personal property to any claimant who fails to secure a court
18 order or pay the required rental charge as ~~provided~~ *set forth* in this
19 section, *provided the owner has fully complied with the*
20 *requirements of this chapter.*

21 SEC. 6. Section 21710 of the Business and Professions Code
22 is repealed.

23 SEC. 7. Section 21710 is added to the Business and Professions
24 Code, to read:

25 21710. ~~If a Declaration in Opposition to Lien Sale~~

26 (a) *If a valid declaration in opposition to lien sale* is received
27 by the owner prior to the date set forth in the notice of lien sale,
28 the owner may enforce the lien only as follows:

29 ~~(a) The owner shall not sell the property for 30 days from the~~
30 ~~date of receipt of the Declaration in Opposition to Lien Sale.~~

31 ~~(b) If the occupant files a complaint challenging the lien sale in~~
32 ~~an appropriate court and serves the owner with a copy of the~~
33 ~~complaint within 30 days of the owner's receipt of the Declaration~~
34 ~~in Opposition to Lien Sale, the owner shall not sell the property~~
35 ~~until the court issues a judgment on the occupant's complaint in~~
36 ~~favor of the owner's lien.~~

37 ~~(c) If the occupant does not serve the owner in accordance with~~
38 ~~subdivision (b) or if~~

39 (1) *File an action in small claims court as provided in Chapter*
40 *5.5 (commencing with Section 116.110) of Title 1 of Part 1 of the*

1 *Code of Civil Procedure to enforce the lien, provided that the*
2 *amount of the lien is within the monetary jurisdiction of the court.*

3 *(2) File an action to enforce the lien in any other court of*
4 *competent jurisdiction.*

5 *(3) If the owner is granted a judgment in favor of the lien, the*
6 *owner may advertise the goods for sale and sell the property as*
7 *provided in Section 21707.*

8 *(b) For any action filed pursuant to this section, the summons*
9 *and complaint may be served by certified mail, postage prepaid,*
10 *addressed to the occupant at his or her last known address, in*
11 *which case service shall be deemed completed on the fifth day*
12 *after the mailing, or in any other manner authorized by Chapter*
13 *4 (commencing with Section 413.10) of Title 5 of Part 2 of the*
14 *Code of Civil Procedure.*